INDEX

	Page
Opinions below	1
Jurisdiction	1
Question presented	2
Statutes involved	2
Statement	2
Argument	4
Conclusion	11
Appendix	12

CITATIONS

Cases:

Albrecht v. *United States*, 329 U.S. 599	7
Cherry Cotton Mills, Inc. v. *United States*, 327 U.S. 536	5
Huddleston v. *Dwyer*, 322 U.S. 232	5
Jones v. *Williams*, 121 Tex. 94, 45 S.W. 2d 130	6, 7, 10
Kubena v. *Hatch*, 144 Tex. 627, 193 S.W. 2d 175	6
Missouri Pacific Railroad Co. v. *Ault*, 256 U.S. 554	8, 9
Reconstruction Finance Corporation v. *Beaver County*, 328 U.S. 204	5
Riverview Packing Co. v. *Reconstruction Finance Corporation*, 207 F. 2d 361	8
School District of Warminster Tp. v. *Reconstruction Finance Corporation*, 72 F. Supp. 149	8, 10
United States v. *Chemical Foundation, Inc.*, 272 U.S. 1	11
United States v. *Nelson*, 91 F. Supp. 557	8
United States v. *N. Y. Rayon Importing Co.*, 329 U.S. 654	7
United States v. *Thayer-West Point Hotel Co.*, 329 U.S. 585	8

Constitution and Statutes:

Constitution of the United States, Article IV, § 3, cl. 2	5

Statutes—Continued

Page

Federal Control Act, Section 10 9
Reconstruction Finance Corporation Act, as amended, 15 U.S.C. 607:
Section 10 12
Revised Civil Statutes of Texas:
Article 7336 ..... 3, 6, 12
Article 7336, par. (a) 12
Article 7336, par. (d) 13
Article 7336, par. (e) 13

Miscellaneous:

Executive Order of the President, dated June 22, 1954 3

In the Supreme Court of the United States

OCTOBER TERM, 1955

No. 724

THE STATE OF TEXAS, PETITIONER

v.

RECONSTRUCTION FINANCE CORPORATION and FEDERAL FACILITIES CORPORATION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

No opinion was filed in the District Court. The opinion of the Court of Appeals for the Fifth Circuit, not yet officially reported, is printed following page 31 of the record.

JURISDICTION

The judgment of the Court of Appeals was entered January 31, 1956 and the petition for a writ of certiorari was filed March 1, 1956. The juris-

diction of this Court is invoked under 28 U.S.C. 1251(1).

QUESTION PRESENTED

Whether the court of appeals erred in holding that under the settled law of the State of Texas certain assessments for delinquency in the payment of real property taxes were in the nature of a penalty and did not constitute a part of the tax itself, and in holding further, on the basis of this interpretation of state law, that the assessments were not within the scope of Congress's consent to state or local taxation of Reconstruction Finance Corporation realty.

STATUTES INVOLVED

The pertinent provisions of the Reconstruction Finance Corporation Act, as amended, 15 U.S.C. 607, and of Article 7336, Revised Civil Statutes of Texas, are set out as an appendix to this brief at pp. 12-14, *infra.*

STATEMENT

The State of Texas, on behalf of itself and Jefferson County, Texas, brought this action against Reconstruction Finance Corporation and Federal Facilities Corporation to recover alleged delinquent and unpaid *ad valorem* taxes for the year 1953 on certain real property owned by respondents or either of them (R. 1-6). The complaint sought recovery of unpaid taxes in the amount of $233,750.00, plus penalties and interest thereon (R. 5, 6).

The case was tried in the District Court for the Eastern District of Texas on an agreed statement

of facts (R. 10-14). It was stipulated that *ad valorem* taxes for the year 1953 in the amount of $233,750.00 were legally levied and assessed against real property owned by Reconstruction Finance Corporation in Jefferson County, Texas, and that these taxes became delinquent on February 1, 1954 (R. 11-12). On or about May 1, 1954, Reconstruction Finance Corporation duly and properly tendered to plaintiff the net amount of *ad valorem* taxes due. This tender was refused by plaintiff on the ground that penalties and interest had then accrued under Article 7336 of the Revised Civil Statutes of Texas (*infra*, pp. 12-14) and that Reconstruction Finance Corporation refused to pay such penalties and interest (R. 12).

Subsequent to the filing of this action, "Reconstruction Finance Corporation and/or Federal Facilities Corporation"[1] tendered the sum of $233,750.00 into the registry of the court in payment of the net amount of the taxes due, but declined to tender or pay the interest and penalties claimed to be due (R. 12).[2] The trial court, after hearing, entered judgment against defendants for

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[1] By Executive Order of the President, dated June 22, 1954, Federal Facilities Corporation was organized and the functions of Reconstruction Finance Corporation relating to the synthetic rubber program, including claims arising from such program, were transferred to Federal Facilities Corporation, effective at the close of business June 30, 1954. It was stipulated that this order included the claim here involved (R. 12).

[2] It was further stipulated that as of July 30, 1954, the amount of the penalties and interest which would accrue to the plaintiff and to each of the several taxing agencies under Article 7336 in the event the federal agencies had a legal obligation to pay such penalties and interest was $25,712.50, and

the amount of the delinquent taxes,[a] and for the additional sum of $33,198.00, the total amount of penalties and interest which the trial court determined was then due on the amount of *ad valorem* tax, with interest thereon at six per cent per annum until paid (R. 21).

On appeal from that portion of the judgment allowing recovery of penalties and interest, the Court of Appeals for the Fifth Circuit reversed. The court pointed out that respondents are instrumentalities of the United States Government, and thus immune from state taxation absent an express congressional waiver. It found that, although the language of the Reconstruction Finance Corporation Act subjected the agency's real property to state and local "taxation to the same extent according to its value as other real property is taxed," this language did not include consent to the imposition of the penalties and interest demanded by the State of Texas, which "under the settled law of the State formed no part of the tax."

ARGUMENT

1. It is axiomatic that Reconstruction Finance Corporation, as an instrumentality of the United

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that this sum would increase at the rate of one-half of one per cent of the amount of taxes due each calendar month or fraction thereof beginning August 1, 1954.

[a] The judgment was reduced, however, in the amount of $124,300.00, which had theretofore in December 1954 been withdrawn and paid to Jefferson County, Texas, under an order of the court, which had provided that this payment would in no way affect the issues in the case or waive any of the rights of the parties (R. 17).

States, see *Cherry Cotton Mills, Inc.* v. *United States,* 327 U.S. 536, is immune from state taxation in the absence of a waiver by Congress. United States Constitution, Article IV, § 3, cl. 2. In establishing the Corporation, Congress provided in Section 10 of the Reconstruction Finance Corporation Act, as amended, 15 U.S.C. 607, that the agency shall be immune from all taxation "* * * except that any real property of the Corporation shall be subject to special assessments for local improvements and shall be subject to State Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed." The nature of this consent to state or local "taxation" was examined by this Court in *Reconstruction Finance Corporation* v. *Beaver County,* 328 U.S. 204. There, it was held that the statute was to be given variable content and that its scope, in a particular case, was to be determined by reference to the law of the state involved.

The decisive question, therefore, is one of Texas law. Examining Texas law, the court below found (slip op. 7) that, under the state rule, the penalties and interest claimed by petitioner constituted no part of the *ad valorem* tax levied and assessed against the real property of respondents. We submit that this conclusion is unassailable.[4]

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[4] This Court has often noted the deference to be accorded the views of intermediate federal courts on questions of state law arising from states within their respective circuits. See, *e.g., Huddleston* v. *Dwyer,* 322 U.S. 232, 237.

Article 7336 of the Revised Civil Statutes of Texas, Appendix, *infra*, pp. 12-14, the sole statutory authority upon which petitioner rests its claim, is headed "Penalty" and provides not that penalties and interest levied thereunder shall become a part of the *ad valorem* tax and entered as such on the delinquent tax rolls, but, on the contrary, that "all such penalties, interest and costs shall be and remain a *statutory charge* * * *" (emphasis supplied). As the court below found (slip op. 7), "Obviously, Article 7336 is a penalty statute and the penalties and interest which are authorized thereunder are no part of the tax. That is what the Article says in plain simple language."

Moreover, any question as to the nature of these statutory charges has been conclusively resolved by the Supreme Court of Texas, which has squarely held that both the penalties and the interest assessed upon delinquent taxes by Article 7336 are not part of the taxes themselves. *Jones* v. *Williams*, 121 Tex. 94, 45 S.W. 2d 130.[5] In the *Jones* case, an act of the Texas legislature releasing "all interest and penalties accrued" on certain local taxes was claimed to violate a section of the State constitution providing that the legislature shall have no power to release persons or property from the payment of taxes except in the event of "great

[5] Petitioner makes no attempt to explain or amplify its statement (Pet. 9) that the *Jones* decision was overruled by *Kubena* v. *Hatch*, 144 Tex. 627, 193 S.W. 2d 175, a case which makes no mention of the *Jones* case and which, as we read it, has no conceivable bearing on the issues here.

public calamity." The Supreme Court of Texas held that, although the general business depression which had prompted enactment of the statute did not constitute such a calamity, the act was nevertheless valid as an exercise of the legislature's power to release *penalties* previously accrued for delinquent taxes (121 Tex. at 99, 102, 45 S.W. 2d at 131, 133). It examined in great detail the history of the various Texas tax statutes [6] and unequivocally concluded (121 Tex. at 103, 45 S.W. 2d at 133):

> * * * that the impositions made for delinquency in rendering property for taxation and for failure to pay taxes,—whether these impositions are denominated "penalties," "interest," "forfeitures," or whether prescribed without definition or name, are all in reality *penalties imposed for delinquency or failure of duty and all enacted in aid of the state's revenue, rather than as charges made by the state for the use or detention of its money.* In other words, the exactions are *"penalties,"* rather than "interest" in the commercial or statutory sense. [Emphasis supplied].[7]

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[6] Its examination included the Texas statute here involved, see 121 Tex. at 108, 45 S.W. 2d at 134-135.

[7] In the face of this decision, petitioner's assertion (Pet. 4) that the "interest" provided for in paragraph (d) of Article 7336 (*supra*, p. 13) is not a penalty is obviously erroneous; *Jones* v. *Williams* flatly states that "interest" so levied is a penalty, and not a charge for use or detention of money. In any event, it is firmly established that, as with taxes, interest cannot be assessed against the United States without its specific consent. *Albrecht* v. *United States*, 329 U.S. 599, 605; *United States* v. *N. Y. Rayon Importing Co.*, 329 U.S. 654,

Since, as a matter of Texas law, the penalties and interest claimed by petitioner are not part of the *ad valorem* tax, it follows that they do not come within the limited waiver of immunity stated in Section 10. See *United States* v. *Nelson*, 91 F. Supp. 557 (N.D. Ill.), reaching a similar result on the basis of a similar construction of comparable provisions of Illinois law, and *School District of Warminster Tp.* v. *Reconstruction Finance Corporation*, 72 F. Supp. 149 (E.D. Pa.), reaching a contrary result on the basis of a construction of the applicable provisions of Pennsylvania taxing statutes.

2. Petitioner's claim of a conflict of decision (Pet. 5-8) is unsound. Indeed, the decisions upon which it relies support the holding below.

Thus, *Missouri Pacific Railroad Co.* v. *Ault*, 256

659; *United States* v. *Thayer-West Point Hotel Co.*, 329 U.S. 585, 590. This rule, of course, applies equally to instrumentalities of the United States including Reconstruction Finance Corporation. *Riverview Packing Co.* v. *Reconstruction Finance Corporation*, 207 F. 2d 361 (C.A. 3).

Equally unavailing is petitioner's attempt to avoid the import of the *Jones* decision by referring to a subsequent Texas constitutional amendment and statute which, in providing for the release of certain delinquent "taxes" accrued prior to 1919, make no reference to penalties and interest (Pet. 9-10). Petitioner argues that, since none of the penalties and interest accrued in connection with these delinquent taxes had been collected, the word "taxes" must have been intended to include penalties and interest. It is a well settled principle of statutory construction, however, that, absent a specific saving provision, a law releasing liability for delinquent taxes releases as well liability for penalties incurred in connection therewith. See *School District of Warminster Tp.* v. *Reconstruction Finance Corporation*, 72 F. Supp. 149, 152 (E.D. Pa.).

U.S. 554, the first case cited in support of a conflict, held that the purpose for which the Government permitted itself to be sued under Section 10 of the Federal Control Act (under which the Government operated the railroads during World War I) "was compensation, not punishment," and, accordingly, that a claim brought by a railroad employee under a state statute which provided a penalty for withholding an employee's wages could not be enforced against the carrier while it was under federal control. The court pointed out that, while compensatory damages "may reasonably include interest and costs * * * double damages, penalties and forfeitures, which do not merely compensate but punish, are not within the purview of the statute."[8] 256 U.S. at 564. Petitioner, ignoring the clear thrust of this decision, seizes upon the portion of the dictum referring to "interest and costs," and argues (Pet. 5-6) that under the "holding" of this Court interest cannot be deemed a penalty. The short answer to this contention is this Court's holding in the *Beaver County* case, *supra*, p. 5, that state, not federal law, determines whether the assessment in question is a penalty. As we have shown, *supra*, p. 7, the Supreme Court of Texas has flatly held that "whether these impositions are denominated 'penalties' [or] 'interest' * * * [they] are all in reality

[8] The Court noted that the Arkansas Supreme Court had held that the assessment was not technically a penalty, but concluded that "whether in a proceeding against the Director General it shall be deemed compensation or a penalty presents a question not of state, but of federal law." 256 U.S. at 565.

penalties imposed for delinquency * * *." *Jones* v. *Williams, supra,* 121 Tex. at 103, 45 S.W. 2d at 133.

Petitioner also claims (Pet. 7), though without amplification, that the decision below conflicts with the rationale of this Court's opinion in *Reconstruction Finance Corporation* v. *Beaver County,* 328 U.S. 204. As stated above, the decision below is in full accord with the *Beaver County* case. There, this Court held that, in order best to accomplish the Congressional purpose, the consent to taxation found in Section 10 should be interpreted "by application of settled state rules." 328 U.S. at 210. This, of course, is precisely the manner in which the court below treated the issue here, basing its denial of petitioner's claim squarely on the determination by the Supreme Court of Texas that the term "taxation" did not include penalties and interest of the kind here in dispute.

Equally without merit is petitioner's reliance on *School District of Warminster Tp.* v. *Reconstruction Finance Corporation,* 72 F. Supp. 149 (E.D. Pa.). The district court there applied the *Beaver County* doctrine, and found that under Pennsylvania law a five per cent assessment for late payment of taxes, even though labeled a "penalty," was in fact not a penalty but part of the tax. 72 F. Supp. at 152-3. The difference in result between that case and the instant case does not establish a conflict but reflects merely a difference in the applicable state law.

3. Petitioner concedes that the federal agencies

have "heretofore, with few exceptions * * * paid their taxes before delinquency" (Pet. 13), but expresses fear of widespread delay in tax payments if delinquency penalties are not applicable. Since the agencies' obligation to pay state taxes arises under federal statute, however, it is hardly likely that freedom from state sanctions will encourage them suddenly to flout the Congressional mandate. Far from there being a presumption that federal officials will disregard acts of Congress, there is a strong presumption that they will obey the law. *United States* v. *Chemical Foundation*, 272 U.S. 1.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be denied.

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APRIL, 1956.

APPENDIX

Section 10 of the Reconstruction Finance Corporation Act, as amended, 15 U.S.C. § 607, provides in pertinent part:

> The Corporation, including its franchise, capital, reserves and surplus, and its income shall be exempt from all taxation now or hereafter imposed by the United States, by any Territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the Corporation shall be subject to special assessments for local improvements and shall be subject to State, Territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed. * * *

Article 7336 of the Revised Civil Statutes of Texas provides in pertinent part:

> Art. 7336. 7692 Penalty
>
> (a) * * *
>
> If any person fails to pay one-half (½) of the taxes, imposed by law upon him or his property, on or before the thirtieth day of November of the year for which the assessment is made, then unless he pays all of the taxes (imposed by law on him or his property), on or before the thirty-first day of the succeeding January, the following penalty shall be payable thereon, to-wit: During the month of

February, one (1%) per cent; during the month of March, two (2%) per cent; during the month of April, three (3%) per cent; during the month of May, four (4%) per cent; during the month of June, five (5%) per cent; and on and after the first day of July, eight (8%) per cent.

* * * * *

(d) All delinquent taxes shall bear interest at the rate of six (6%) per cent per annum from the date of their delinquency. All penalties and interest provided for in this Act shall, when collected, be paid to the State, counties, and districts, if any, in proportion to the taxes upon which the penalty and interest are collected. All discounts provided for in this Act shall, when allowed, be charged to the State, counties, and districts, if any, in proportion to the taxes upon which such discounts are allowed.

(e) The Assessor and Collector of Taxes shall, as of the first day of July of each year for which any State, county and district taxes, for the preceding year remain unpaid, make up a list of the lands and lots and/or property on which any taxes for such preceding year are delinquent, charging against the same all unpaid taxes assessed against the owner thereof on the rolls for said year.

Penalties, interest and costs accrued against any land, lots and/or property need not be

entered by the Assessor and Collector of Taxes on said list, but in each and every instance all such penalties, interest and costs shall be and remain a statutory charge with the same force and effect as if entered on said list, and the Assessor and Collector of Taxes shall calculate and charge all such penalties, interest and costs on all delinquent tax statements or delinquent tax receipts issued by him.

* * * * *

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HAROLD B. WILLEY, C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1955

No. 724

THE STATE OF TEXAS
Petitioner,

v.

RECONSTRUCTION FINANCE CORPORATION AND FEDERAL FACILITIES CORPORATION
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY TO BRIEF FOR THE RESPONDENTS IN OPPOSITION

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